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SUBJECT: COTE D'IVOIRE -- OUTSIDE LEGAL EXPERTS REVIEW
REFORM LEGISLATION

Classified By: Andrea Lewis, Econ Chief, for reasons 1.4 b,d

11. (C) Summary. A panel of legal experts from Burundi and Rwanda, led by the Advisor to South African President Thabo Mbeki, has issued an analysis of the Linas-Marcoussis legislation, and determined that many of the bills are not in compliance with either the letter or spirit of the Linas-Marcoussis Accords. The Panel approached the two most sensitive issues -- eligibility to run for President ("Article 35") and the composition of the electoral commission -- with reluctance, and indicated that these issues require political solutions through continued mediation by President Mbeki. On Article 35, the Panel rejected the legal argument according to which a referendum is not required, but it stopped short of saying that therefore a referendum must be held. On the electoral commission, the Panel rejected the opposition's assertion that there must be equal representation of all parties, but it criticized both the letter of the new law and the spirit in which it is being implemented. End summary.

Article 35 Amendment

12. (C) The question of how to amend Article 35, whether by referendum or decree, is one of the most crucial issues that still divide Cote d'Ivoire, because it will determine who is allowed to run in this fall's elections. The Panel was very reluctant to enter into the debate on this matter, preferring to defer to President Mbeki to craft a political solution to this vexing problem. However, at the insistence of the parties, particularly the New Forces, the Panel did review the Article 35 conundrum.

13. (C) In its review, the Panel noted that the language of the Article 35 amendment that was passed by the National Assembly in December was taken verbatim from Linas-Marcoussis. Thus, it is the method of putting this constitutional amendment into effect that is controversial, not the text itself.

14. (C) As the Panel frames it; the argument boils down to whether there is a distinction between matters concerning the election of the President, and matters concerning eligibility to be the President. If there is, it could be argued that the new Article 35 belongs in the latter category and a referendum would not be required. However, the Panel found that those two concepts are inseparable, and furthermore noted that the signatories to the Linas-Marcoussis acknowledged them to be inseparable.

15. (C) However, the Panel stopped short of explicitly stating that therefore a referendum must be held. On the contrary, in its introduction to the report the Panel noted with great care that questions concerning eligibility to be President were outside its mandate, and rather were the subject of ongoing mediation efforts by President Mbeki, presumably leaving open the door for a political solution.

Independent Electoral Commission) Election process

16. (C) The Panel also approached with great reluctance the controversy over the composition of the Independent Electoral Commission, again out of concern not to undercut President Mbeki's mediation efforts.

17. (C) In this case, as framed by the Panel, the argument boils down to whether Linas-Marcoussis calls for equal representation of all parties on the Electoral Commission, as demanded by the opposition, or only "better" representation. The Panel concluded that Linas-Marcoussis requires better, not equal representation. However, the Panel expressed concern that the current structure does not provide better representation, because participation of the New Forces members is predicated on disarmament. The Panel also noted that the current legislation fails to guarantee better representation on the Commission's Board of Directors. (Note: The Panel did not address one of the opposition's main concerns that some of its supposed representatives on the Commission have been suborned to side with President Gbagbo and do not actually represent the opposition parties.)

18. (C) The Panel also emphasized its concern that the

legislation on the financing of political campaigns only provides financing to parties currently represented in Parliament. If this bill becomes law, one of the main opposition parties, RDR -) the party of prospective presidential candidate Alassan Ouattara -- will receive no governmental funding for the 2005 elections. The Panel also raised concerns that the current funding mandate only covers the Presidential election and makes no mention of the legislative elections that are currently scheduled for

December 2005.

Panel,s views on the other legislation

19. (C) Items that still need work:

-- Nationality and Citizenship codes - The Panel stated definitively that the changes made to these laws in December are not in conformity with the Linas-Marcoussis Agreement. These laws impose new, more burdensome requirements such as habitual residency⁸ and included additional expatriating acts that were neither in the previous legislation nor contemplated in Linas-Marcoussis. (Note: These requirements were FPI add-ons to the legislation and were not contained in the original text as presented by the Minister of Justice (RDR) Henriette Diabate.)

-- Identity Cards, and the Status of Foreigners) These laws are also not in compliance. It was again the FPI add-ons to the original legislation that the Panel found troubling. For example, the identity cards are now required to show whether the individual is a naturalized or native-born Ivoirian. The Panel found these requirements to be reminiscent of the identity card system in Rwanda that facilitated the genocide. The Panel further noted that individuals, origins as Ivoirians is at the crux of the civil war that has divided this nation for the last five years.

-- Immigration procedures) While the Panel declined to give specific suggestions, it agreed that the current immigration processes must be streamlined in accordance with the mandate of Linas-Marcoussis.

-- National Human Rights Commission) The Panel determined that this law did not provide representation of all parties and was therefore out of compliance with Linas-Marcoussis.

10. (C) The Panel approved the following legislation:

-- Media bills) The Panel determined that laws on the press and audiovisual media were in compliance with Linas-Marcoussis. However, because the question of representation on the new board of directors for state-owned radio and television was so sensitive in the run-up to elections, the Panel recommended that President Mbeki add this matter to his agenda.

-- Structure of the Identity Commission) The Panel determined that this Commission met the requirements of Linas-Marcoussis.

13. (C) Comment: The Panel's findings only confirmed what was already widely understood -- President Gbagbo and his FPI party have not kept their side of the Linas-Marcoussis bargain. What remains to be seen is what President Mbeki will do with these findings. The referendum issue is especially troubling. Though the Panel's finding was very narrow and legalistic, the bottom line is that they did not find any reason in law why a referendum should not be required. This will not help President Mbeki push the Ivoirians toward a political compromise that will allow the elections to go forward. End comment.

HOOKS